

FIRST REGULAR SESSION

SENATE BILL NO. 219

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS RIDGEWAY, CALLAHAN AND GRIESHEIMER.

Read 1st time January 22, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1243S.01I

AN ACT

To repeal section 577.023 as enacted by senate committee substitute for house committee substitute for house bill no. 1715 merged with conference committee substitute for house committee substitute for senate committee substitute for senate bills nos. 930 & 947, ninety-fourth general assembly, second regular session and section 577.023 as enacted by senate committee substitute for house committee substitute for house bill no. 1715, ninety-fourth general assembly, second regular session, and to enact in lieu thereof one new section relating to continuous alcohol monitoring.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 577.023 as enacted by senate committee substitute for
2 house committee substitute for house bill no. 1715 merged with conference
3 committee substitute for house committee substitute for senate committee
4 substitute for senate bills nos. 930 & 947, ninety-fourth general assembly, second
5 regular session and section 577.023 as enacted by senate committee substitute for
6 house committee substitute for house bill no. 1715, ninety-fourth general
7 assembly, second regular session, are repealed and one new section enacted in
8 lieu thereof, to be known as section 577.023, to read as follows:

[577.023. 1. For purposes of this section, unless the context
2 clearly indicates otherwise:
3 (1) An "aggravated offender" is a person who:
4 (a) Has pleaded guilty to or has been found guilty of three
5 or more intoxication-related traffic offenses; or
6 (b) Has pleaded guilty to or has been found guilty of one or
7 more intoxication-related traffic offense and, in addition, any of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

8 following: involuntary manslaughter under subdivision (2) or (3) of
9 subsection 1 of section 565.024, RSMo; murder in the second degree
10 under section 565.021, RSMo, where the underlying felony is an
11 intoxication-related traffic offense; or assault in the second degree
12 under subdivision (4) of subsection 1 of section 565.060, RSMo; or
13 assault of a law enforcement officer in the second degree under
14 subdivision (4) of subsection 1 of section 565.082, RSMo;

15 (2) A "chronic offender" is:

16 (a) A person who has pleaded guilty to or has been found
17 guilty of four or more intoxication-related traffic offenses; or

18 (b) A person who has pleaded guilty to or has been found
19 guilty of, on two or more separate occasions, any combination of the
20 following: involuntary manslaughter under subdivision (2) or (3) of
21 subsection 1 of section 565.024, RSMo; murder in the second degree
22 under section 565.021, RSMo, where the underlying felony is an
23 intoxication-related traffic offense; assault in the second degree
24 under subdivision (4) of subsection 1 of section 565.060, RSMo; or
25 assault of a law enforcement officer in the second degree under
26 subdivision (4) of subsection 1 of section 565.082, RSMo; or

27 (c) A person who has pleaded guilty to or has been found
28 guilty of two or more intoxication-related traffic offenses and, in
29 addition, any of the following: involuntary manslaughter under
30 subdivision (2) or (3) of subsection 1 of section 565.024, RSMo;
31 murder in the second degree under section 565.021, RSMo, where
32 the underlying felony is an intoxication-related traffic offense;
33 assault in the second degree under subdivision (4) of subsection 1
34 of section 565.060, RSMo; or assault of a law enforcement officer in
35 the second degree under subdivision (4) of subsection 1 of section
36 565.082, RSMo;

37 (3) An "intoxication-related traffic offense" is driving while
38 intoxicated, driving with excessive blood alcohol content,
39 involuntary manslaughter pursuant to subdivision (2) or (3) of
40 subsection 1 of section 565.024, RSMo, murder in the second degree
41 under section 565.021, RSMo, where the underlying felony is an
42 intoxication-related traffic offense, assault in the second degree
43 pursuant to subdivision (4) of subsection 1 of section 565.060,

44 RSMo, assault of a law enforcement officer in the second degree
45 pursuant to subdivision (4) of subsection 1 of section 565.082,
46 RSMo, or driving under the influence of alcohol or drugs in
47 violation of state law or a county or municipal ordinance, where the
48 defendant was represented by or waived the right to an attorney in
49 writing;

50 (4) A "persistent offender" is one of the following:

51 (a) A person who has pleaded guilty to or has been found
52 guilty of two or more intoxication-related traffic offenses;

53 (b) A person who has pleaded guilty to or has been found
54 guilty of involuntary manslaughter pursuant to subdivision (2) or
55 (3) of subsection 1 of section 565.024, RSMo, assault in the second
56 degree pursuant to subdivision (4) of subsection 1 of section
57 565.060, RSMo, assault of a law enforcement officer in the second
58 degree pursuant to subdivision (4) of subsection 1 of section
59 565.082, RSMo; and

60 (5) A "prior offender" is a person who has pleaded guilty to
61 or has been found guilty of one intoxication-related traffic offense,
62 where such prior offense occurred within five years of the
63 occurrence of the intoxication-related traffic offense for which the
64 person is charged.

65 2. Any person who pleads guilty to or is found guilty of a
66 violation of section 577.010 or 577.012 who is alleged and proved
67 to be a prior offender shall be guilty of a class A misdemeanor.

68 3. Any person who pleads guilty to or is found guilty of a
69 violation of section 577.010 or 577.012 who is alleged and proved
70 to be a persistent offender shall be guilty of a class D felony.

71 4. Any person who pleads guilty to or is found guilty of a
72 violation of section 577.010 or section 577.012 who is alleged and
73 proved to be an aggravated offender shall be guilty of a class C
74 felony.

75 5. Any person who pleads guilty to or is found guilty of a
76 violation of section 577.010 or section 577.012 who is alleged and
77 proved to be a chronic offender shall be guilty of a class B felony.

78 6. No state, county, or municipal court shall suspend the
79 imposition of sentence as to a prior offender, persistent offender,

80 aggravated offender, or chronic offender under this section nor
81 sentence such person to pay a fine in lieu of a term of
82 imprisonment, section 557.011, RSMo, to the contrary
83 notwithstanding. No prior offender shall be eligible for parole or
84 probation until he or she has served a minimum of five days
85 imprisonment, unless as a condition of such parole or probation
86 such person performs at least thirty days of community service
87 under the supervision of the court in those jurisdictions which have
88 a recognized program for community service. No persistent
89 offender shall be eligible for parole or probation until he or she has
90 served a minimum of ten days imprisonment, unless as a condition
91 of such parole or probation such person performs at least sixty days
92 of community service under the supervision of the court. No
93 aggravated offender shall be eligible for parole or probation until
94 he or she has served a minimum of sixty days imprisonment. No
95 chronic offender shall be eligible for parole or probation until he or
96 she has served a minimum of two years imprisonment.

97 7. The state, county, or municipal court shall find the
98 defendant to be a prior offender, persistent offender, aggravated
99 offender, or chronic offender if:

100 (1) The indictment or information, original or amended, or
101 the information in lieu of an indictment pleads all essential facts
102 warranting a finding that the defendant is a prior offender or
103 persistent offender; and

104 (2) Evidence is introduced that establishes sufficient facts
105 pleaded to warrant a finding beyond a reasonable doubt the
106 defendant is a prior offender, persistent offender, aggravated
107 offender, or chronic offender; and

108 (3) The court makes findings of fact that warrant a finding
109 beyond a reasonable doubt by the court that the defendant is a
110 prior offender, persistent offender, aggravated offender, or chronic
111 offender.

112 8. In a jury trial, the facts shall be pleaded, established and
113 found prior to submission to the jury outside of its hearing.

114 9. In a trial without a jury or upon a plea of guilty, the
115 court may defer the proof in findings of such facts to a later time,

116 but prior to sentencing.

117 10. The defendant shall be accorded full rights of
118 confrontation and cross-examination, with the opportunity to
119 present evidence, at such hearings.

120 11. The defendant may waive proof of the facts alleged.

121 12. Nothing in this section shall prevent the use of
122 presentence investigations or commitments.

123 13. At the sentencing hearing both the state, county, or
124 municipality and the defendant shall be permitted to present
125 additional information bearing on the issue of sentence.

126 14. The pleas or findings of guilt shall be prior to the date
127 of commission of the present offense.

128 15. The court shall not instruct the jury as to the range of
129 punishment or allow the jury, upon a finding of guilt, to assess and
130 declare the punishment as part of its verdict in cases of prior
131 offenders, persistent offenders, aggravated offenders, or chronic
132 offenders.

133 16. Evidence of a prior conviction, plea of guilty, or finding
134 of guilt in an intoxication-related traffic offense shall be heard and
135 determined by the trial court out of the hearing of the jury prior to
136 the submission of the case to the jury, and shall include but not be
137 limited to evidence of convictions received by a search of the
138 records of the Missouri uniform law enforcement system
139 maintained by the Missouri state highway patrol. After hearing
140 the evidence, the court shall enter its findings thereon. A plea of
141 guilty or a finding of guilt followed by incarceration, a fine, a
142 suspended imposition of sentence, suspended execution of sentence,
143 probation or parole or any combination thereof in any
144 intoxication-related traffic offense in a state, county, or municipal
145 court, or any combination thereof, shall be treated as a prior plea
146 of guilty or finding of guilt for purposes of this section.]

577.023. 1. For purposes of this section, unless the context clearly
2 indicates otherwise:

3 (1) An "aggravated offender" is a person who:

4 (a) Has pleaded guilty to or has been found guilty of three or more
5 intoxication-related traffic offenses; or

6 (b) Has pleaded guilty to or has been found guilty of one or more
7 intoxication-related traffic offense and, in addition, any of the following:
8 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
9 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where
10 the underlying felony is an intoxication-related traffic offense; or assault in the
11 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or
12 assault of a law enforcement officer in the second degree under subdivision (4) of
13 subsection 1 of section 565.082, RSMo;

14 (2) A "chronic offender" is:

15 (a) A person who has pleaded guilty to or has been found guilty of four or
16 more intoxication-related traffic offenses; or

17 (b) A person who has pleaded guilty to or has been found guilty of, on two
18 or more separate occasions, any combination of the following: involuntary
19 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024,
20 RSMo; murder in the second degree under section 565.021, RSMo, where the
21 underlying felony is an intoxication-related traffic offense; assault in the second
22 degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault
23 of a law enforcement officer in the second degree under subdivision (4) of
24 subsection 1 of section 565.082, RSMo; or

25 (c) A person who has pleaded guilty to or has been found guilty of two or
26 more intoxication-related traffic offenses and, in addition, any of the following:
27 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
28 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where
29 the underlying felony is an intoxication-related traffic offense; assault in the
30 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or
31 assault of a law enforcement officer in the second degree under subdivision (4) of
32 subsection 1 of section 565.082, RSMo;

33 (3) **"Continuous alcohol monitoring", automatically testing breath,**
34 **blood, or transdermal alcohol concentration levels and tampering**
35 **attempts at least once every hour, regardless of the location of the**
36 **person who is being monitored, and regularly transmitting the**
37 **data. Continuous alcohol monitoring shall be considered an electronic**
38 **monitoring service under subsection 3 of section 217.690, RSMo;**

39 (4) An "intoxication-related traffic offense" is driving while intoxicated,
40 driving with excessive blood alcohol content, involuntary manslaughter pursuant
41 to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, murder in the

42 second degree under section 565.021, RSMo, where the underlying felony is an
43 intoxication-related traffic offense, assault in the second degree pursuant to
44 subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law
45 enforcement officer in the second degree pursuant to subdivision (4) of subsection
46 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in
47 violation of state law or a county or municipal ordinance, where the defendant
48 was represented by or waived the right to an attorney in writing;

49 **[(4)] (5)** A "persistent offender" is one of the following:

50 (a) A person who has pleaded guilty to or has been found guilty of two or
51 more intoxication-related traffic offenses;

52 (b) A person who has pleaded guilty to or has been found guilty of
53 involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of
54 section 565.024, RSMo, assault in the second degree pursuant to subdivision (4)
55 of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in
56 the second degree pursuant to subdivision (4) of subsection 1 of section 565.082,
57 RSMo; and

58 **[(5)] (6)** A "prior offender" is a person who has pleaded guilty to or has
59 been found guilty of one intoxication-related traffic offense, where such prior
60 offense occurred within five years of the occurrence of the intoxication-related
61 traffic offense for which the person is charged.

62 2. Any person who pleads guilty to or is found guilty of a violation of
63 section 577.010 or 577.012 who is alleged and proved to be a prior offender shall
64 be guilty of a class A misdemeanor.

65 3. Any person who pleads guilty to or is found guilty of a violation of
66 section 577.010 or 577.012 who is alleged and proved to be a persistent offender
67 shall be guilty of a class D felony.

68 4. Any person who pleads guilty to or is found guilty of a violation of
69 section 577.010 or section 577.012 who is alleged and proved to be an aggravated
70 offender shall be guilty of a class C felony.

71 5. Any person who pleads guilty to or is found guilty of a violation of
72 section 577.010 or section 577.012 who is alleged and proved to be a chronic
73 offender shall be guilty of a class B felony.

74 6. No state, county, or municipal court shall suspend the imposition of
75 sentence as to a prior offender, persistent offender, aggravated offender, or
76 chronic offender under this section nor sentence such person to pay a fine in lieu
77 of a term of imprisonment, section 557.011, RSMo, to the contrary

78 notwithstanding. No prior offender shall be eligible for parole or probation until
79 he or she has served a minimum of five days imprisonment, unless as a condition
80 of such parole or probation such person performs at least thirty days of
81 community service under the supervision of the court in those jurisdictions which
82 have a recognized program for community service. No persistent offender shall
83 be eligible for parole or probation until he or she has served a minimum of ten
84 days imprisonment, unless as a condition of such parole or probation such person
85 performs at least sixty days of community service under the supervision of the
86 court. **In addition to any other terms or conditions of probation or**
87 **parole, the court shall consider, as a condition of probation or parole**
88 **for any person who pleads guilty to or is found guilty of an**
89 **intoxication-related traffic offense, requiring the offender to abstain**
90 **from consuming or using alcohol or any products containing alcohol as**
91 **demonstrated by continuous alcohol monitoring or by verifiable breath**
92 **alcohol testing performed a minimum of four times per day as**
93 **scheduled by the court for such duration as determined by the court.**
94 No aggravated offender shall be eligible for parole or probation until he or she
95 has served a minimum of sixty days imprisonment. **However, the court may**
96 **suspend execution of up to thirty days of this term if, as a condition of**
97 **such probation or parole, such person abstains from consuming or**
98 **using alcohol or any products containing alcohol as demonstrated by**
99 **continuous alcohol monitoring or by verifiable breath alcohol testing**
100 **performed a minimum of six times per day as scheduled by the court,**
101 **for not less than sixty days nor more than one hundred and twenty**
102 **days as determined by the court.** No chronic offender shall be eligible for
103 parole or probation until he or she has served a minimum of two years
104 imprisonment; **except, the court may, acting under section 559.115, RSMo,**
105 **grant probation if, as a condition of such probation, such person**
106 **abstains from consuming or using alcohol or any products containing**
107 **alcohol as demonstrated by continuous alcohol monitoring or by**
108 **verifiable breath alcohol testing performed a minimum of six times per**
109 **day as scheduled by the court, for not less than six months nor more**
110 **that two years as determined by the court.**

111 7. The state, county, or municipal court shall find the defendant to be a
112 prior offender, persistent offender, aggravated offender, or chronic offender if:

113 (1) The indictment or information, original or amended, or the information

114 in lieu of an indictment pleads all essential facts warranting a finding that the
115 defendant is a prior offender or persistent offender; and

116 (2) Evidence is introduced that establishes sufficient facts pleaded to
117 warrant a finding beyond a reasonable doubt the defendant is a prior offender,
118 persistent offender, aggravated offender, or chronic offender; and

119 (3) The court makes findings of fact that warrant a finding beyond a
120 reasonable doubt by the court that the defendant is a prior offender, persistent
121 offender, aggravated offender, or chronic offender.

122 8. In a jury trial, the facts shall be pleaded, established and found prior
123 to submission to the jury outside of its hearing.

124 9. In a trial without a jury or upon a plea of guilty, the court may defer
125 the proof in findings of such facts to a later time, but prior to sentencing.

126 10. The defendant shall be accorded full rights of confrontation and
127 cross-examination, with the opportunity to present evidence, at such hearings.

128 11. The defendant may waive proof of the facts alleged.

129 12. Nothing in this section shall prevent the use of presentence
130 investigations or commitments.

131 13. At the sentencing hearing both the state, county, or municipality and
132 the defendant shall be permitted to present additional information bearing on the
133 issue of sentence.

134 14. The pleas or findings of guilt shall be prior to the date of commission
135 of the present offense.

136 15. The court shall not instruct the jury as to the range of punishment or
137 allow the jury, upon a finding of guilt, to assess and declare the punishment as
138 part of its verdict in cases of prior offenders, persistent offenders, aggravated
139 offenders, or chronic offenders.

140 16. Evidence of a prior **conviction**, plea of guilty, or finding of guilt in
141 an intoxication-related traffic offense shall be heard and determined by the trial
142 court out of the hearing of the jury prior to the submission of the case to the jury,
143 and shall include but not be limited to evidence of convictions received by a
144 search of the records of the Missouri uniform law enforcement system maintained
145 by the Missouri state highway patrol. After hearing the evidence, the court shall
146 enter its findings thereon. A plea of guilty or a finding of guilt followed by
147 incarceration, a **fine**, a suspended imposition of sentence, suspended execution
148 of sentence, probation or parole or any combination thereof in any
149 intoxication-related traffic offense in a state, county or municipal court or any

150 combination thereof, shall be treated as a prior plea of guilty or finding of guilt
151 for purposes of this section.

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Unofficial

Bill

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